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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 600

[Docket No. 160908833-9240-02]

RIN 0648-BG34

Requirements of the Vessel Monitoring System Type-Approval

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Final rule.

SUMMARY: All owners of vessels participating in a NOAA Vessel Monitoring System (VMS) program are required to acquire a NMFS-approved Enhanced Mobile Transmitting Unit (EMTU) or Mobile Transmitting Unit (MTU) to comply with the Vessel Monitoring System requirements. This final action amends the existing VMS Type-Approval regulations by removing the requirement for VMS vendors to periodically renew their EMTU/MTU type-approvals. This renewal process has proven to be unnecessary, has cost fishermen and approved VMS vendors additional time and expense, and has imposed unnecessary costs on the government. Removing the type-approval renewal requirement will spare fishermen, VMS vendors and the government the time and expense associated with the renewal process.

DATES: The final rule will be effective *[insert date of publication in the FEDERAL REGISTER]*.

FOR FURTHER INFORMATION CONTACT: Kelly Spalding, Vessel Monitoring System Program Manager, Headquarters: 301-427-8269 or Kelly.spalding@noaa.gov.

SUPPLEMENTARY INFORMATION:

Background

In December 2014, NMFS published a final rule to codify national VMS type-approval standards for the approval by NMFS of an EMTU/MTU, any associated software, and mobile communications service (MCS; collectively referred to as a VMS) before they are authorized for use in the NMFS VMS program. See 79 FR 77399 (December 24, 2014). Those standards are set out in 50 CFR Part 600, Subpart Q, *Vessel Monitoring System Type-Approval*.

Fishers must comply with applicable Federal fishery VMS regulations, and in doing so, may select from a variety of EMTU/MTU vendors that have been approved by NMFS to participate in the VMS program for specific fisheries. The NOAA Office of Law Enforcement (OLE) maintains the list of type-approved VMS units at http://www.nmfs.noaa.gov/ole/about/our_programs/vessel_monitoring.html. The EMTU/MTU allows OLE to determine the geographic position of the vessel at specified intervals or during specific events, via mobile communications services between NMFS OLE and the vessel using a NMFS-approved MCS provider. These communications are secure and the information is only made available to authorized personnel.

This action removes the two sections of 50 CFR Part 600, Subpart Q, that require VMS type-approval holders (VMS vendors) to periodically renew their type-approvals. Section 600.1512 of the VMS type approval regulations previously provided that type-approvals were valid for three years from the date on which NMFS publishes a notice in the **Federal Register** of the approval; and that prior to the expiration of that three-year type-approval period, the VMS vendor was required to apply for a type-approval renewal.

NMFS found that the renewal process is unnecessary, has cost fishermen and approved VMS vendors additional time and expense, and imposed unnecessary cost on the government. Removing the type-approval renewal requirement spares fishermen, VMS vendors and the government the time and expense associated with the renewal process without impairing the effectiveness of the VMS program.

Section 600.1513 of Subpart Q set out the type-approval renewal process. A VMS vendor seeking renewal of a VMS type-approval was required to submit a written renewal request and supporting materials to NOAA OLE at least 30 days, but not more than six months, prior to the end of the three-year type-approval period. To do so, the type-approval holder was required to submit a written request letter containing the information and documentation regarding their continued compliance with their Vessel Monitoring System Type-Approval.

The type-approval renewal provisions were designed to provide for an in-depth look at the type-approval holder's overall record of compliance with type-approval requirements. However, NMFS' experience with the renewal process showed it to be cumbersome for both type-approval holders and NMFS OLE. In some cases, type-approval holders opted to apply for type-approval of newer VMS units rather than seek renewal of their older VMS units. When a type-approval lapsed due to non-renewal, fishermen were required to replace their VMS units that were no longer type approved, despite the fact that the unit may still have been functional and compliant with all current VMS standards. Doing so imposed unnecessary cost on fishermen who had to purchase a new VMS unit and may have led to lost fishing opportunities while the VMS unit was being replaced.

In addition to being costly and burdensome for type-approval holders, fishermen and NMFS, the renewal process was not necessary because 50 CFR 600.1514 (re-designated as § 600.1512 by this final rule) sets out an EMTU type-approval revocation process. In the event that a type-approved EMTU model fails to meet the VMS EMTU specifications, NMFS can remove it from the VMS program through this revocation process. With this action, the type-approval will remain valid indefinitely unless NMFS initiates the revocation process pursuant to § 600.1514, or the type-approval holder chooses or agrees to forfeit their type-approval. Due to the removal of the type-approval renewal process in § 600.1513, NMFS is removing the reference to that section in § 600.1510 (Notification of type-approval). NMFS is also re-designating §§ 600.1514 through 600.1518 as §§ 600.1512 through 600.1516, in light of the removal of the former §§ 600.1512 and 600.1513.

NMFS issued a proposed rule on December 5, 2017, to remove the VMS type-approval renewal requirement discussed above. *See* 82 FR 57419 (December 5, 2017). NMFS received no comments during the initial 30-day comment period on the rule and re-opened the comment period for an additional 30 days in February 2018. *See* 83 FR 8416 (Feb. 27, 2018).

Changes from the Proposed Rule

There are no changes from the proposed rule.

Responses to Public Comments

NMFS received six public comments on the proposed rule. Two individuals provided comments in support of the rule. NMFS received four comments that compared U.S. air quality to that of other countries and expressed the view that U.S. environmental

regulations hinder business growth. These comments are not directly relevant to this rulemaking, so we did not prepare a response.

Classification

The NMFS Assistant Administrator has determined that this rule is consistent with the provisions of the Magnuson-Stevens Fishery Conservation and Management Act, and other applicable law.

This rule has been determined to be not significant for purposes of Executive Order 12866. This rule is an Executive Order 13771 deregulatory action.

Because this rule relieves a restriction by removing the requirement that VMS type-approval holders renew their type approval every three years, it falls within an exception to the 30-day delay in the date of effectiveness provision of the Administrative Procedure Act (5 U.S.C. 553(d)(1)). As noted in the Background section above, this final rule removes two sections of 50 CFR Part 600, Subpart Q that require VMS type approval holders to periodically renew their type approval. This final rule eliminates the requirement for type-approval holders to submit to NMFS a written renewal request and supporting documentation demonstrating their compliance with the detailed VMS type-approval requirements over the preceding three years.

The Chief Counsel for Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration (SBA) during the proposed rule stage that this rule would not have a significant economic impact on a substantial number of small entities. The factual basis for the certification was published in the proposed rule and is not repeated here. No comments were received regarding this certification. As a result, a regulatory flexibility analysis was not required and none was

prepared.

List of Subjects in 50 CFR Part 600

Administrative practice and procedure, Fisheries, Fishing, Reporting and recordkeeping requirements.

Dated: April 9, 2019.

Samuel D. Rauch III,
Deputy Assistant Administrator for Regulatory Programs,
National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 600 is amended as follows:

PART 600—MAGNUSON-STEVENS ACT PROVISIONS

1. The authority citation for part 600 continues to read as follows:

Authority: 5 U.S.C. 561 and 16 U.S.C. 1801 *et seq.*

2. In § 600.1510, revise paragraph (a) to read as follows:

§ 600.1510 Notification of type-approval.

(a) If a request made pursuant to § 600.1501 (type-approval) is approved or partially approved, NMFS will issue a type approval letter and publish a notice in the **Federal Register** to indicate the specific EMTU model, MCSP or bundle that is approved for use, the MCS or class of MCSs permitted for use with the type-approved EMTU, and the regions or fisheries in which the EMTU, MCSP, or bundle is approved for use.

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§§ 600.1512 and 600.1513 [Removed]

3. Remove §§ 600.1512 and 600.1513.

§§ 600.1514 through 600.1518 [Redesignated as §§ 600.1512 through 600.1516]

4. Redesignate §§ 600.1514 through 600.1518 as §§ 600.1512 through 600.1516, respectively.

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